

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 23-2852E

PALM BEACH COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held in this matter before Brittany O. Finkbeiner, an Administrative Law Judge of the Division of Administrative Hearings (“DOAH”), on September 12, 2023, by Zoom conference.

APPEARANCES

For Petitioner: Petitioner, pro se
 (Address of Record)

For Respondent: Laura E. Pincus, Esquire
 School Board of Palm Beach County, Florida
 3318 Forest Hill Boulevard, Suite C-331
 West Palm Beach, Florida 33406

STATEMENT OF THE ISSUE

Whether Petitioner’s individualized education plan (“IEP”) provided a free and appropriate public education (“FAPE”).

PRELIMINARY STATEMENT

The due process hearing took place on September 12, 2023. Petitioner presented the testimony of the following witnesses: [REDACTED], [REDACTED]

██████████, ██████████, ██████████, ██████████, and ██████████
██████████. Petitioner's Exhibits 1 through 8 and 11 were admitted into evidence.

Respondent presented the testimony of ██████████, ██████████
██████████, ██████████, ██████████, and Petitioner.
Respondent's Exhibits 2, 6, 20, 21, 23, 24, and 26 were admitted into
evidence.

The due process hearing Transcript was filed with DOAH on
September 12, 2023. The parties timely filed proposed final orders, which
were considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the
version in effect at the time of the alleged violations. For stylistic
convenience, the undersigned will use female pronouns in this Final Order
when referring to Petitioner. The female pronouns are neither intended, nor
should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner enrolled as an incoming ██████████-grade student at School A
in Respondent's school district on August 2, ██████████.
2. Prior to relocating to Florida, Petitioner was a student at School B in
New York. Petitioner had an IEP at School B that identified her as a student
with a learning disability, and was valid from May 28, ██████████, through May 24,
██████████.
3. Respondent requested Petitioner's student records from School B in
██████████, but did not receive them. It was not conclusively established why
Petitioner's records, including her IEP, were not provided to Respondent in a
timely manner. However, it was Respondent's responsibility to ensure that

Petitioner received FAPE regardless of challenges in receiving records from another state.

4. School A implemented a new IEP on February 3, [REDACTED], which was valid through Petitioner's graduation in May [REDACTED].

5. At the February 3, [REDACTED], IEP meeting, Petitioner's mom shared a drawing of Petitioner's that depicted Petitioner hanging herself. Members of the IEP team offered to facilitate counseling for Petitioner, which Petitioner's mother did not accept that day. Although Petitioner was already receiving counseling from an outside provider at the time, the record does not reflect that Petitioner received any counseling services provided by Respondent.

6. Petitioner graduated with a standard Florida diploma in May of [REDACTED].

7. At the time of the due process hearing, Petitioner was an [REDACTED]-year-old college student attending a well-known university in another state.

8. Throughout the hearing, it was apparent that Petitioner's mother was attempting to actively conceal the fact that Petitioner was attending college. For example, Petitioner's mother cut off one witness after he mentioned Petitioner's college attendance, prompting the witness to backtrack and act as though he was unsure whether Petitioner was a college student. When Petitioner herself testified, she evaded questions about her college attendance up until continuing to do so would have been an outright lie. This ill-conceived ruse in the presentation of Petitioner's case considerably diminished her credibility.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u); and the Rehabilitation Act of 1973, 29 U.S.C. § 794.56. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

10. Respondent is a local educational agency (“LEA”), as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, Respondent is required to comply with the Individuals with Disabilities Act, 20 U.S.C. § 1401, *et seq* (“IDEA”). As an LEA, under the IDEA, Respondent was required to make a FAPE available to Petitioner. *Sch. Bd. of Lee Cnty. v. E.S.*, 561 F. Supp. 2d 1282, 1291 (M.D. Fla. 2008) (*citing M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1095 (11th Cir. 2006)); *M.H. v. Nassau Cnty. Sch. Bd.*, 918 So. 2d 316, 318 (Fla. 1st DCA 2005).

11. At all relevant times, Petitioner was a student with a disability as defined under 34 C.F.R. § 300.8(a)(1); 20 U.S.C. § 1401(3)(A)(i); and Florida Administrative Code Rule 6A-6.03411(1)(f).

12. In enacting the IDEA, Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *See Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency’s compliance with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990); *see also Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

13. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child’s records and participate in meetings concerning their

child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint with respect to any matter relating to the identification, evaluation, educational placement of their child, or the provision of FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), and (b)(6).

14. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a student with FAPE. As an initial matter, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. A procedural error does not automatically result in a denial of FAPE. *See G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the student's right to FAPE, significantly infringed on the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

IEP Procedure

15. In the present case, Petitioner alleges a procedural flaw in Respondent's process of obtaining Petitioner's IEP from School B in New York. There is no evidence in the record that the delay on Respondent's part significantly infringed on her parents' opportunity to participate in the decision-making process or caused actual deprivation of educational benefits. Although Respondent may have mishandled the request for student records, a denial of FAPE does not follow under the facts of this case. To the contrary, Petitioner graduated and was admitted to the university that she currently attends.

IEP Substance

16. Petitioner also alleges a substantive violation; that is, that the IEP was flawed in its design and did not provide FAPE. To satisfy the IDEA's

substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

[S]pecial education services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

17. Pursuant to the second step of the Rowley test, it must be determined whether the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07. In *Endrew F.*, the Supreme Court held that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” As discussed in *Endrew F.*, “[t]he ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials,” and that “[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.*

18. The record evidence shows that Petitioner was in need of mental health services. The record also reflects that she received such services on a private basis, and that Respondent offered additional services that Petitioner chose not to accept. It is unclear what more Respondent could have included

in her IEP, or otherwise provided, to more effectively address any mental health issues that were a barrier to her education.

19. Although certainly not ideal given the delay in implementation, Petitioner's IEP resulted in educational benefits. Petitioner graduated from high school and was accepted into the university that she currently attends. Petitioner's attempts to conceal this crucial information calls into question the veracity of her entire case such that the burden of proof was not met.

Disposition

20. Petitioner did not prove that Petitioner's IEP failed to provide a FAPE.

21. The balance of Petitioner's claims do not have sufficient foundation in law or fact to meet the burden of proof.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all forms of requested relief are DENIED.

DONE AND ORDERED this 3rd day of November, 2023, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 2023.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).